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Cooperatives & Condominiums Alert

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Martin Act Amendment paves way for more conversions post-HSTPA

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NY Governor Hochul signs Martin Act amendment to ease restrictions on cooperative and condominium conversions.



What's the Impact?

- / The bill is intended to facilitate the conversion of small owner-occupied residential rental buildings to condo or coop status.
- / Further action by Albany to promote more condominium conversions in New York City may be forthcoming in the next legislative session.

On Friday, December 16, 2022, New York Governor Hochul signed into law a bill that amends N.Y. Gen. Bus. Law § 352-eeee (GBL § 352-eeee) — the section of the Martin Act that governs the conversion of residential rental buildings into cooperatives and condominiums in New York City. [Assembly Bill A8809/Senate Bill S8564](#) is intended to facilitate the conversion of small residential rental buildings (those containing five or fewer residential units) where the owner of the building has also resided (or an immediate family member of the owner has resided) at the property for at

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least two years. The law becomes effective 90 days from the date of signing and the attorney general is mandated to both issue and repeal any rule necessary for its implementation. Nixon Peabody will be on close watch for the possible repeal of existing policy memos and proposed rulemaking, which should shed more light on the impact of this new amendment.

While the scope of the amendment to GBL § 352-eeee only affects small buildings, the passage by the legislature, and the signing into law by the governor, of A8809/S8564 is significant because it is telegraphing two major unintended consequences of the Housing Stability and Tenant Protection Act of 2019 (the HSTPA) involving property conversion laws in New York City, and that further action by Albany may be forthcoming in the next legislative session.

A8809B/S8564 may be an indication of future changes to come.

That A8809B/S8564 passed on the floor of the Assembly by a 61 to 0 vote and was signed into law by a Democratic governor are themselves significant events. They signify that Albany lawmakers and the governor recognize that building owners are chafing against the restrictions in their ability to convert buildings to condominium or cooperative ownership due to the HSTPA. By enacting A8809/S8564 into law, the legislature and governor have demonstrated a (limited) willingness to unburden small-building owners of those restrictions.

Another unintended consequence from the passage of the HSTPA is the inability of property owners to use a highly lauded attorney general policy memo to preserve expiring affordable housing under threat of privatization. During the Schneiderman Administration, the attorney general partnered with city and state agencies to issue the October 10, 2014, policy memo entitled "[Exemption for Partial Building Sales In Residential Rental Buildings.](#)" The memo relied entirely on the fact that GBL § 352-eeee did not expressly provide that a sponsor must offer the right to purchase to all tenants during a conversion. Instead, the right to purchase was found in the regulations, and was waivable if such waiver would not undermine the tenant protections of the statute. Similar to the end of small owner-occupied conversions ameliorated by A8809/S8564, the HSTPA also put an end to this very useful preservation tool, probably inadvertently. But that is also likely to change.

Nixon Peabody expects the action in the next legislative session to further loosen restrictions on certain building conversions. One extensive piece of legislation sponsored last session by Senator Cordell Cleare and Assemblymember Harvey Epstein is now being refined for reintroduction in the new legislative session to ameliorate the inability to use the October 10, 2014, policy memo. That bill, [Assembly Bill A9340/Senate Bill S8334](#), would permit a small class of mixed-income buildings whose regulatory agreements with city and state agencies are soon expiring to convert the market-rate units to condominium ownership with just 15 percent of market-rate tenants or outside bona fide purchasers contracting for a unit, provided that the building owner also agrees to preserve the at-risk-of-loss units as permanently affordable. This change would also come at a time when for-sale housing stock is at an [all-time low](#), and budget woes will only grow worse in the face of reduced transfer tax revenue.

Nixon Peabody's full-service [Cooperatives and Condominiums practice](#) can provide guidance about A8809/S8564 or A9340/S8334 and other issues affecting cooperatives, condominiums, and other common-interest communities. For more information about the content of this alert, please contact your Nixon Peabody attorney or:

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